

Senate File 468 - Introduced

SENATE FILE 468
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1067)

(COMPANION TO HF 232 BY
COMMITTEE ON JUDICIARY)

A BILL FOR

- 1 An Act relating to probate proceedings, including fiduciary and
- 2 trustee duties, and including applicability provisions.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 633.78, subsection 1, Code 2023, is
2 amended to read as follows:

3 1. A fiduciary under this chapter may present a written
4 request to any person for the purpose of obtaining property
5 owned by a decedent or by a ward protected person of a
6 conservatorship for which the fiduciary has been appointed,
7 or property to which a decedent or ward protected person is
8 entitled, including information about property owned by a
9 decedent or protected person that has passed or will pass
10 by beneficiary designation or joint tenancy ownership, or
11 for information about such property needed to perform the
12 fiduciary's duties. The request must contain statements
13 confirming all of the following:
14 a. The fiduciary's authority has not been revoked, modified,
15 or amended in any manner which would cause the representations
16 in the request to be incorrect.
17 b. The request has been signed by all fiduciaries acting on
18 behalf of the decedent or ward protected person.
19 c. The request has been dated and affirmed under penalty of
20 perjury to be true and correct or has been sworn and subscribed
21 to under penalty of perjury before a notary public as provided
22 in chapter 9B.
23 d. A photocopy of the fiduciary's letters of appointment is
24 being provided with the request.

25 Sec. 2. Section 633.78, subsection 4, paragraph a, Code
26 2023, is amended to read as follows:

27 a. Damages sustained by the decedent's or ward's protected
28 person's estate.

29 Sec. 3. Section 633.301, Code 2023, is amended to read as
30 follows:

31 **633.301 Copy of will for executor.**

32 ~~When~~ Upon request by the executor, when a will has been
33 admitted to probate and certified pursuant to section 633.300,
34 the clerk shall cause a certified copy thereof to be placed
35 in the hands of the executor to whom letters are issued. The

1 clerk shall retain the will in a separate file provided for
2 that purpose until the time for contest has expired, and
3 promptly thereafter shall place it with the files of the
4 estate.

5 Sec. 4. Section 633.309, Code 2023, is amended to read as
6 follows:

7 **633.309 Time within which action must be commenced.**

8 1. An action to contest or set aside the probate of a will
9 must be commenced in the court in which the will was admitted
10 to probate within the later to occur of four months from the
11 date of second publication of notice of admission of the will
12 to probate or one month following the mailing of the notice to
13 all heirs of the decedent and devisees under the will whose
14 identities are reasonably ascertainable, at such persons' last
15 known addresses.

16 2. A party claiming the decedent's will was procured in
17 whole or in part by tortious interference with inheritance must
18 join such claim together in a timely will contest. The time
19 period set out in this section applies to both the will contest
20 and procurement of the decedent's will by tortious interference
21 with inheritance if the party making the claim was given notice
22 pursuant to section 633.304.

23 Sec. 5. Section 633.555, Code 2023, is amended to read as
24 follows:

25 **633.555 Procedure in lieu of conservatorship for a minor.**

26 1. If a conservator has not been appointed for a minor,
27 money due to a minor or other property to which a minor is
28 entitled, not exceeding in the aggregate ~~twenty-five~~ fifty
29 thousand dollars in value, shall be paid or delivered to a
30 ~~custodian under any uniform transfers to minors Act.~~ one or
31 more of the following:

32 a. A custodian under the uniform transfer to minor account
33 established for the protected person pursuant to chapter 565B
34 or the laws of any other state.

35 b. A custodial trustee under a uniform custodial trust

1 account established for the protected person pursuant to
2 chapter 633F or the laws of any other state.

3 c. An account owner or participant under a college savings
4 plan account established for the protected person pursuant to
5 section 529 of the Internal Revenue Code or chapter 12D.

6 d. The account owner under an ABLE account established for
7 the protected person with disabilities pursuant to section 529A
8 of the Internal Revenue Code or chapter 12I.

9 2. If a conservator has not been appointed for a minor, and
10 the money due to a minor or other property to which a minor is
11 entitled exceeds fifty thousand dollars in the aggregate, the
12 property may be paid or delivered in the manner set forth in
13 subsection 1 only if such transfer is authorized by the court.

14 3. The written receipt of the custodian constitutes an
15 acquittance of the person making the payment of money or
16 delivery of property.

17 Sec. 6. Section 633.561, subsections 3 and 6, Code 2023, are
18 amended to read as follows:

19 3. If the respondent is entitled to representation and is
20 indigent or incapable of requesting counsel, the court shall
21 appoint an attorney to represent the respondent. The cost of
22 court appointed counsel for indigents, including the cost of
23 the trial transcript, shall be assessed against the county
24 in which the proceedings are pending. For the purposes of
25 this subsection, the court shall find a person is indigent if
26 the person's income and resources do not exceed one hundred
27 fifty percent of the federal poverty level or the person would
28 be unable to pay such costs without prejudicing the person's
29 financial ability to provide economic necessities for the
30 person or the person's dependents.

31 6. If the court determines that it would be in the
32 respondent's best interest to have legal representation
33 with respect to any proceedings in a guardianship or
34 conservatorship, the court may appoint an attorney to represent
35 the respondent at the expense of the respondent or the

1 respondent's estate, or if the respondent is indigent the cost
2 of the court appointed attorney, including the cost of the
3 trial transcript, shall be assessed against the county in which
4 the proceedings are pending.

5 Sec. 7. NEW SECTION. **633A.4403** **Trustee-written request and**
6 **third-party protection.**

7 1. A trustee under this chapter may present a written
8 request to any person for the purpose of obtaining information
9 needed to perform the trustee's duties or information regarding
10 any of the following property:

11 a. Owned by the trust for which the trustee is acting as
12 fiduciary.

13 b. To which a living or deceased settlor is entitled.

14 c. Owned by the deceased settlor at the time of death,
15 including information about property of a deceased settlor that
16 has passed or will pass by beneficiary designation or joint
17 tenancy ownership.

18 2. The written request must include a certification of
19 trust that complies with section 633A.4604. A person to whom a
20 request is presented under this section may require that the
21 trustee presenting the request provide proof of the trustee's
22 identity.

23 3. A person who in good faith provides the property or
24 information a trustee requests under this section, after taking
25 reasonable steps to verify the identity of the trustee and
26 who has no knowledge that the representations contained in
27 the request are incorrect, shall not be liable to any person
28 for so acting and may assume without inquiry the existence of
29 the facts contained in the request. The period of time to
30 verify the trustee's authority shall not exceed ten business
31 days from the date the person received the request. Any right
32 or title acquired from the trustee in consideration of the
33 provision of property or information under this section is not
34 invalid in consequence of a misapplication by the trustee. A
35 transaction, and a lien created by a transaction, entered into

1 by the trustee and a person acting in reliance upon a request
2 under this section is enforceable against the assets for which
3 the trustee has responsibility.

4 4. If a person refuses to provide the requested property or
5 information within ten business days after receiving a request
6 under this section, the trustee may bring an action to recover
7 the property or information or compel its delivery against
8 the person to whom the trustee presented the written request.
9 An action brought under this section must be brought within
10 one year after the date of the act or failure to act. If the
11 court finds that the person acted unreasonably in failing to
12 deliver the property or information as requested in the written
13 request, the court may award any or all of the following to the
14 trustee:

15 a. Damages sustained by the trust or by a living or deceased
16 settlor's estate.

17 b. Costs of the action.

18 c. A penalty in an amount determined by the court, but
19 not less than five hundred dollars or more than ten thousand
20 dollars.

21 d. Reasonable attorney fees, as determined by the court,
22 based on the value of the time reasonably expended by the
23 attorney and not by the amount of the recovery on behalf of the
24 trustee.

25 5. This section does not limit or change the right of
26 beneficiaries, heirs, or creditors of a living or deceased
27 settlor to estate or trust property to which they are otherwise
28 entitled.

29 Sec. 8. Section 633B.211, subsection 2, Code 2023, is
30 amended by adding the following new paragraphs:

31 NEW PARAGRAPH. h. Establish a medical assistance special
32 needs trust pursuant to chapter 633C for the benefit of
33 the principal and transfer an interest of the principal in
34 real property, stocks and bonds, accounts with financial
35 institutions or securities intermediaries, insurance,

1 annuities, and other property to the trustee of any such trust.

2 NEW PARAGRAPH. *i.* Establish a medical assistance income
3 trust pursuant to chapter 633C for the benefit of the principal
4 and transfer an income interest of the principal to the trustee
5 of any such trust.

6 Sec. 9. APPLICABILITY. The following apply to estates,
7 trusts, and conservatorships in existence on or after the
8 effective date of this Act, that were opened or created before,
9 on, or after the effective date of this Act:

10 1. The sections of this Act amending section 633.78.

11 2. The section of this Act amending section 633.555.

12 3. The section of this Act enacting section 633A.4403.

13 EXPLANATION

14 The inclusion of this explanation does not constitute agreement with
15 the explanation's substance by the members of the general assembly.

16 This bill relates to probate proceedings.

17 The bill allows a fiduciary to present a written request to
18 any person for the purpose of obtaining information about the
19 property owned by the decedent or protected person that has
20 passed or will pass by beneficiary designation or joint tenancy
21 ownership. The written request needs to be dated and affirmed
22 under penalty of perjury to be true and correct.

23 Under current law, a certified copy of a will is provided to
24 the executor by the clerk of court upon the will being admitted
25 into probate. The bill requires an executor to request a copy.

26 The bill requires that a party claiming that the decedent's
27 will was procured by tortious interference with inheritance
28 must join the claims in a timely will contest.

29 The bill changes the procedure in lieu of a conservatorship
30 for a minor by increasing the aggregate amount of money from
31 \$25,000 to \$50,000 under which the amount may be paid or
32 delivered to the following: a uniform transfer to minor
33 account, a uniform custodial trust account, an account owner
34 or participant under a college savings plan account, or an
35 account owner under an ABLE account. An amount over \$50,000

1 may be paid or delivered in this manner only if authorized by
2 the court.

3 The bill provides that the cost of a trial transcript for
4 an indigent respondent shall be assessed against the county in
5 which the probate proceedings are pending.

6 The bill creates a procedure for a trustee's written
7 request and third-party protection. A trustee may present a
8 written request to any person for the purpose of obtaining
9 information needed to perform the trustee's duties or regarding
10 property owned by the trust for which the trustee is acting as
11 fiduciary, for which a living or deceased settlor is entitled,
12 or owned by the deceased settlor at the time of death. The
13 request must include a certification of trust (Code section
14 633A.4604). A person to whom a request is presented may
15 require that the trustee presenting the request provide proof
16 of the trustee's identity.

17 The bill provides that a person who in good faith provides
18 the property or information a trustee requests, after taking
19 reasonable steps to verify the identity of the trustee and who
20 has no knowledge that the representations contained in the
21 request are incorrect, shall not be liable to any person for
22 so acting and may assume without inquiry the existence of the
23 facts contained in the request. If a person refuses to provide
24 the requested property or information within 10 business days
25 after receiving a request, the trustee may bring an action to
26 recover the property or information or compel its delivery
27 against the person to whom the trustee presented the written
28 request. In an action against a person for unreasonably
29 withholding property, the court may award any or all of the
30 following to the trustee: damages sustained by the trust or by
31 a living or deceased settlor's estate, costs of the action, a
32 penalty set forth in the bill, and reasonable attorney fees.

33 Under the bill, certain provisions do not limit or change
34 the right of beneficiaries, heirs, or creditors of a living or
35 deceased settlor to estate or trust property to which they are

1 otherwise entitled.

2 The bill allows an agent of a protected person to establish a
3 medical assistance special needs trust and a medical assistance
4 income trust pursuant to Code chapter 633C for the benefit of
5 the principal.

6 Certain provisions of the bill apply to estates, trusts, and
7 conservatorships in existence on or after July 1, 2023, that
8 were opened or created before, on, or after July 1, 2023, as
9 set forth in the bill.